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By: 

PATENT  
Attorney Docket No. 018563-002400US  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

MUHAMMAD CHISHTI et al.

Application No.: 09/756,885

Filed: January 9, 2001

For: METHOD AND SYSTEM FOR  
DISTRIBUTING PATIENT  
REFERRALS

Confirmation No. 6714

Examiner: Lena Najarian

Technology Center/Art Unit: 3626

APPELLANTS' BRIEF UNDER  
37 CFR §41.37

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant offers this Appeal Brief in furtherance of the Notice of Appeal electronically filed on August 3, 2006 for the above-referenced application. Appendix A, attached hereto, contains a copy of all claims pending in this case. Appendix B, attached hereto, is marked as the evidence appendix. Appendix C, attached hereto, is marked as the related proceeding appendix.

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### **1. REAL PARTY IN INTEREST**

All right, title, and interest in the subject invention and application is assigned to Align Technology, Inc., having offices at 851 Martin Avenue, Santa Clara, California 95050. Therefore, Align Technology, Inc. is the real party in interest.

### **2. RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences are known which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

### **3. STATUS OF CLAIMS**

Claims 1-30 and 46-59 are currently pending and are the subject of this appeal. No other claims are pending. Claims 31-45 and 60-70 have been canceled.

Claims 1-5 and 12-13 stand rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Tawil (U.S. 5,225,976).

Claims 6-11 stand rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1) and Tawil (U.S. 5,225,976), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

Claims 14, 16-19, 21-22, and 29-30 stand rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1).

Claim 15 stands rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Tawil (U.S. 5,225,976).

Claim 20 stands rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Falchuk *et al.* (U.S. 2002/0152096 A1).

Claims 23-28 stand rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and in view of Tawil (U.S. 5,225,976), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

Claims 46-49, 51-52, 55-56, and 58 stand rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1).

Claims 50 and 59 stand rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of DeBruin-Ashton (U.S. 6,014,629).

Claims 53-54 and 57 stand rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

Appellant additionally points out that, in the Office Action mailed April 8, 2005, the following rejections were made and subsequently overcome: claim 13 was rejected under 35 U.S.C. §112, second paragraph; claims 1-25, 28-30, 46-54, and 58-59 were rejected under 35 U.S.C. §101; and claims 1-5 and 12-13 were rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1). However, these rejections were overcome by Appellant's response mailed September 8, 2005.

#### **4. STATUS OF AMENDMENTS**

Subsequent to the Final Office Action mailed March 3, 2006, and in Appellant's response mailed June 2, 2006, Appellant's submitted an amendment under 37 C.F.R. §1.116 seeking to add new claim 71. New claim 71 was denied entry according to the Advisory Action mailed June 27, 2006. As such, only claims 1-30 and 46-59 are currently pending and are the subject of this appeal. No other claims are pending. A copy of all the pending claims involved in the present appeal is provided in Appendix A attached hereto.

## **5. SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention provides methods and systems for referring patients to practitioners who perform medical procedures. Application filed January 9, 2001 (hereafter "Application"), page 2, lines 11-12. The medical procedures will typically be new and innovative procedures which are being introduced into the medical community by a company, organization, or institution which has developed the procedure and which usually has proprietary rights to the procedure. *Id.*, page 2, lines 12-15. In this way, the company, organization, or other institution can maintain control over performance of the procedure, typically by controlling training of the practitioners as well as by dispensing and distributing of tools, devices, and kits required to perform the procedures. *Id.*, page 2, lines 15-18. An exemplary procedure for referral according to the present invention is an orthodontic procedure which is performed using the Invisalign® System available from Align Technology, Inc., Santa Clara, California. *Id.*, page 2, lines 18-20. The procedure as well as the appliances used in the procedure are proprietary and described in U.S. Patent No. 5,975,893, as well as numerous other pending U.S. patent applications. *Id.*, page 2, lines 20-24.

In a first aspect of the present invention, a method for referring patients to practitioners comprises certifying a group of practitioners to perform a medical procedure, such as an orthodontic procedure. *Id.*, page 3, lines 1-3. Individual patients who wish to receive the procedure are identified, and the identified patients are provided with a referral list of certified practitioners. *Id.*, page 3, lines 3-4. In order to assure that most patients are referred to practitioners who have significant experience in performing the procedure, the list preferentially includes and/or presents practitioners who have performed more procedures than other practitioners. *Id.*, page 3, lines 5-7. Typically, the practitioners will be placed into "tiers" or levels which reflect the number of procedures performed, with those practitioners who have performed more procedures being assigned to higher tiers while those who have performed fewer procedures are assigned to lower tiers. *Id.*, page 3, lines 7-10. The ability to direct or channel patients to experienced practitioners has a number of advantages. *Id.*, page 3, lines 11-12. The majority of patients will be seen by practitioners who have significant experience and who have

probably gained additional skills. *Id.*, page 3, lines 12-13. Conversely, by directing or channeling fewer referral patients to those practitioners with less experience, those practitioners can gain experience without becoming overwhelmed with referrals. *Id.*, page 3, lines 13-15. Additionally, those practitioners who have decided to emphasize or focus their practice on the procedure will benefit from a continuing referral base of patients interested in having the procedure performed. *Id.*, page 3, lines 16-18.

Independent claim 1 recites a method of referring patients to practitioners. Claim 1. The method includes certifying a group of practitioners to perform a medical procedure (10); identifying individual patients who wish to receive the procedure (60); accessing an electronic database having information comprising a number of procedures performed by each of the group of certified practitioners (70); and providing to the identified individual patients a list of certified practitioners, selected from the electronic database, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list (90). These steps are discussed in the Application, for example, at page 8, line 15, through page 9, line 21; page 10, line 6, through page 12, line 5; FIG. 1.

Independent claim 14 recites a method for referring patients to dental practitioners. Claim 14. The method includes certifying dental practitioners to perform a dental procedure (10); informing a potential patient population of the availability of the procedure (50); identifying individual patients who wish to receive the procedure (60); accessing an electronic database having information comprising performance criteria for each of the group of certified dental practitioners (70); and providing to the identified individual patients referral lists of certified practitioners, selected from the electronic database, wherein individual practitioners are preferentially placed on the referral lists based on one or more performance criteria (90). These steps are discussed in the Application, for example, at page 8, line 15, through page 9, line 21; page 10, line 6, through page 12, line 5; FIG. 1.

Independent claim 46 recites a method for maintaining a referral directory. Claim 46. The method includes certifying practitioners to perform a medical procedure (10); tracking a number of times each certified practitioner performs the procedure (30, 40); and maintaining a patient referral directory in an electronic database having information comprising the number of

times each certified practitioner has performed the procedure, wherein certified practitioners selected from the electronic database are prioritized on a list based on the number of times each certified practitioner has performed the procedure (20, 30, 40, 80). These elements are discussed on the Application, for example, at page 8, line 15, through page 9, line 21; page 10, line 6, through page 12, line 5; FIG. 1.

#### **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 1-5 and 12-13 are properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Tawil (U.S. 5,225,976).

Whether claims 6-11 are properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1) and Tawil (U.S. 5,225,976), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

Whether claims 14, 16-19, 21-22, and 29-30 are properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1).

Whether claim 15 is properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Tawil (U.S. 5,225,976).

Whether claim 20 is properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Falchuk *et al.* (U.S. 2002/0152096 A1).

Whether claims 23-28 are properly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and in view of Tawil (U.S. 5,225,976), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

Whether claims 46-49, 51-52, 55-56, and 58 are properly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1).

Whether claims 50 and 59 are properly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of DeBruin-Ashton (U.S. 6,014,629).

Whether claims 53-54 and 57 are properly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Kurzius *et al.* (U.S. 6,385,620 B1).

## **7. ARGUMENT**

### **A. Claims 1-5 and 12-13 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Tawil (U.S. 5,225,976).**

In the Final Office Action mailed March 3, 2006 claims 1-5 and 12-13 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk *et al.* (U.S. 2002/0152096 A1), and further in view of Tawil (U.S. 5,225,976). Appellant believes that the Examiner has not established a *prima facie* case of obviousness under 35 U.S.C. § 103 and MPEP §§ 2142 and 2143, and as such respectfully traverses these rejections for the reasons discussed below.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Fine*, 5 USPQ2d 1596, 1598, 1599 (Fed. Cir. 1988); MPEP § 2142. *See also In re Piasecki*, 223 USPQ 785, 787, 788 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, three basic criteria must be met. MPEP at §§ 2142 and 2143. First, the Examiner must show some suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine reference teachings so as to achieve the claimed invention. *Id.* at §§ 2142 and 2143.01; *In re Fine*, 5 USPQ2d at 1598, 1599. Second, the Examiner must establish a reasonable expectation of success for the modifications. MPEP §§ 2142 and 2143.02. Finally, the Examiner must show that the cited references, alone or in combination, teach or suggest all claim limitations. *Id.* at §§ 2142 and 2143.03; *In re Royka*, 180 USPQ 580, 583 (CCPA 1974). The teaching or suggestion to make the claimed combination, as well as the reasonable expectation of success, must be found in the prior art and cannot be based on applicant's disclosure. MPEP §



2142; *In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). *See also* MPEP § 2143-2143.03 (citing cases pertinent to each of the three criteria).

In general, despite the differences between the cited references the presently claimed invention (discussed below), the Examiner uses DeBruin-Ashton as a sort of general framework in reconstructing, with use of deficient secondary references and a large amount of hindsight, a pieced-together, hypothetical system that only vaguely resembles that of the present invention. In essence, the Examiner has taken the approach that the Federal Circuit has repeatedly rejected as being improper for establishing a *prima facie* case of obviousness under 35 U.S.C. §103. In particular, the courts have repeatedly instructed that the rejection of an application solely by finding alleged prior art corollaries for claimed elements is inappropriate because it essentially would permit an Examiner "to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat patentability of the claimed invention." *In re Rouffet*, 47 USPQ2d 1453, (Fed.Cir. 1998). As set forth below, however, besides the general and vague similarity in teaching a patient referral system, the DeBruin-Ashton system is quite different from system disclosed in the present application, and fails to teach numerous elements of the invention as claimed. Furthermore, the secondary references of Falchuk and Tawil not only fail to cure the deficiencies of DeBruin-Ashton, but fail to provide the teachings for which they are cited. Thus, not only do the cited references fail to teach the claimed invention, as set forth below, but without the benefit of hindsight there would be no motivation to combine DeBruin-Ashton, Falchuk and Tawil in the first place.

As such, Appellants submit that, and for reasons set forth in detail below, a *prima facie* case of obviousness has not been met because the Examiner's rejection fails at least to satisfy at least two of the above requirements. In particular, there is no suggestion or motivation to combine the cited references, and even if combined, the cited references, alone or in combination, fail teach or suggest all claim limitations. Appellant submits that each rejected claim 1-5 and 12-13 presents distinct issues concerning patentability. In the interest of administrative economy and efficiency, however, Appellant presents their position for the

pending claims as a single group, using claim 1, from which other rejected claims directly or indirectly depend, as a representative claim.

Independent claim 1, from which claims 2-5, 12 and 13 depend, reads as follows:

*A method for referring patients to practitioners, said method comprising:*

*certifying a group of practitioners to perform a medical procedure;*

*identifying individual patients who wish to receive the procedure;*

*accessing an electronic database having information comprising a number of procedures performed by each of the group of certified practitioners; and*

*providing to the identified individual patients a list of certified practitioners, selected from the electronic database, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list.*

[Emphasis provided]

Appellant first points out that the Examiner has not shown where the cited references teach or suggest all the elements of claim 1 as recited above, thereby precluding *prima facie* obviousness. In particular, the Examiner has not shown where the cited references teach or suggest 1) certifying a group of practitioners to perform a medical procedure; or 2) providing to identified patients a list of certified practitioners, selected from the electronic database, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list, as recited in claim 1.

**i) The DeBruin-Ashton references fails to teach various elements of claim 1.**

The Examiner has cited DeBruin-Ashton as allegedly teaching "an electronic database (Fig. 1) and selection algorithms for certain physicians to be represented in higher proportion (col. 12, lines 47-54)." However, DeBruin-Ashton fails to teach at least the steps of a) certifying a group of practitioners to perform a medical procedure; b) accessing an electronic database having information comprising a number of procedures performed by each of the group of certified practitioners; and c) providing to the identified patients a list of certified practitioners, selected from the electronic database, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list, as recited in claim 1.

The DeBruin-Ashton reference is directed to a directory system with which customers can select physicians having specialties that correspond to the health care needs of the customer. DeBruin-Ashton teaches selecting physicians based on broad specialty categories (e.g., pediatrics for customers having children, gastroenterology for customers who are over 60 years old, etc.) and then reducing the number of physicians originally selected in order to present a more manageable list for a customer. For example, the methods of DeBruin-Ashton include randomly removing physicians from the list in order to reduce the list to a pre-selected number of physicians (see, e.g., col. 12, lines 43-47). The DeBruin-Ashton reference does not teach a database comprising the number of procedures performed and, moreover, is silent with respect to listing physicians preferentially based on the number of times a particular procedure has been performed.

The Examiner alleges that DeBruin-Ashton's use of "other selection algorithms" is equivalent to placing practitioners preferentially on a list based on the number of performed procedures (col. 12, lines 47-54). However, the only "other selection algorithm" taught by DeBruin-Ashton consists of representing physicians who have newly joined the health care plan in a higher proportion than physicians that have been with the health care service for an extended period of time (see, e.g., col. 12, lines 47-54). Applicants point out that this is distinctly different from the current disclosure and, in fact, produces a result opposite that currently disclosed, which

is to refer patients to practitioners who have more experience and are likely more efficient in performing the medical procedure for which they have been certified (see, e.g., page 8, line 34 to page 9, line 2). Nowhere does DeBruin-Ashton teach certifying practitioners or listing physicians preferentially based on the number of times a particular procedure has been performed, as required in the current claims.

Although Appellants have previously pointed out the above cited shortcomings of the cited DeBruin-Ashton reference with respect to failure to teach each and every element of the claimed invention (see, e.g., Appellants' response mailed 9/12/2005, pages 9 and 10; Appellants' response mailed 6/15/2006, page 10), the Examiner has failed to address Appellants' remarks with respect to DeBruin-Ashton. Instead, despite the differences between the teachings of DeBruin-Ashton and the claimed invention, the Examiner continues to use the DeBruin-Ashton in combination with the cited secondary references of Falchuk and Tawil. As set forth below, however, the secondary references of Falchuk and Tawil not only fail to cure the deficiencies of DeBruin-Ashton, but fail to provide the teachings for which they are cited.

**ii) The Falchuk references at least fails to teach the "certifying" element of claim 1.**

The Examiner has admitted that DeBruin-Ashton does not teach certifying a group of practitioners to perform a medical procedure, but cites Falchuk to cure this deficiency of DeBruin-Ashton (Office Action mailed 4/8/2005, page 6). Appellants respectfully disagree and submit that Falchuk fails to teach the "certifying" element of claim 1 for the reasons set forth below.

Rather than teaching certifying a group of practitioners to perform a medical procedure, Falchuk teaches a medical consultation support system designed to direct and track consultation between a primary care physician and a specialist physician, e.g., for consultation related to a medical condition of a patient. The Examiner alleges that the "accreditation" taught at paragraphs 0021 and 0030 of Falchuk are equivalent to the "certifying" step of the current claims. Applicants point out, however, that the teachings of Falchuk are limited to the awarding of continuing medical education (CME) credit for general medical education purposes. In

particular, the "accreditation module" taught by Falchuk concerns recording and reporting of CME credits to a responsible accreditation authority (e.g., state medical board), based on the educational value, to the primary care physician, of the consultation with a specialist physician. While CME credits may be important for a physician to maintain an active medical license, the awarding of CME credits by consultation of a primary care physician with a specialist physician, as taught by Falchuk, distinctly differs from the certifying of a group of practitioners to perform a particular medical procedure, as required by the current claims. As such, Falchuk fails to teach certifying a group of practitioners to perform a medical procedure, as recited in current claim 1.

In response to Appellants' remarks regarding the failure of Falchuk to teach or suggest the certifying element as recited in claim 1, the Examiner has merely re-cited the same previously cited passages of Falchuk and stated "the Examiner believes these passages address Applicant's certifying of practitioners" (Final Office Action mailed 3/3/2006, page 10). This statement by the Examiner is insufficient to rebut Appellants' remarks pointing out that the cited reference fails to teach the element for which it is being cited. Rather than setting forth any evidence or reasoning to support the rejection, the Examiner merely cited again the location the purported teachings of the cited reference, followed by a conclusory statement that the claim element had been identified in the art. However, broad, conclusory statements regarding the alleged teaching of references, standing alone, are not sufficient to establish a case of *prima facie* obviousness. Moreover, simply reciting the same deficient provision of Falchuk does not change the simple fact that Falchuk fails to teach certifying a group of practitioners to perform a medical procedure, as recited in current claim 1.

**iii) The cited Tawil references fails to provide teachings missing from DeBruin-Ashton.**

It is further admitted by the Examiner that DeBruin-Ashton does not teach tracking the number of procedures performed and, therefore, does not teach providing a list of certified practitioners, selected from the electronic database, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list, as recited in claim 1 (Final Office Action mailed 3/3/2006, page 3).

The Tawil reference is cited by the Examiner as teaching tracking the number of times a procedure has been performed. *Id.* Tawil teaches an automated health benefit processing system for the purposes of determining insurance benefit/payment information. Tawil, however, fails to provide the teachings that are missing from DeBruin-Ashton and/or Falchuk. For example, while Tawil teaches a database from which "the number of times the provider has performed the procedure within a given amount of time, for example, one year, can be provided", Tawil fails to disclose providing a list of certified practitioners, wherein those practitioners who have performed more procedures than others of the practitioners are placed preferentially on the list, as recited in claim 1. Even if information from the Tawil database were provided to a patient, Tawil does not teach providing a list of certified practitioners or a list of any practitioners where those practitioners are organized (e.g., listed) in the manner specified according to the claimed invention.

Thus, even if, for arguments sake only, one of ordinary skill were to combine the cited references (even though the Examiner has cited no real suggestion or motivation to do so), the combination of references would still not produce the claimed invention. For example, combining DeBruin-Ashton, Falchuk and Tawil might, at best, only produce a list of physicians arranged either randomly or in a listing with physicians new to a health care plan listed in higher proportion. Furthermore, while such a hypothetical combination might produce a list of physicians whose communication and standing with a CME accrediting authority or state medical board has been facilitated (e.g., system of Falchuk), the proposed combination would not teach certifying a group of practitioners to perform a specific medical procedure.

**iv) No motivation or suggestion exists to support the Examiner's proposed combination of references.**

Furthermore, not only do the cited references fail to teach the claimed invention, as set forth above, but without the benefit of hindsight there would be no motivation to combine DeBruin-Ashton, Falchuk and Tawil in the first place.

It is well-settled that a *prima facie* case under 35 U.S.C. § 103 requires a clear and particular showing of some suggestion or motivation, either in the cited references themselves or

in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine reference teachings so as to achieve the specific combination as claimed by the applicant. *See* MPEP §§ 2142, 2143.01; *In re Fine*, 5 USPQ2d at 1598, 1599 (Fed. Cir. 1988); *In re Dance*, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998). The suggestion or motivation to make the claimed combination cannot be based on applicant's disclosure - i.e., impermissible hindsight. MPEP § 2142; *In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). *See also* MPEP §§ 2143, 2143.01 (citing cases). Moreover, the proposed motivation must have sufficient "force" to "impel persons skilled in the art to do what applicant has done." *Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. Inter. 1993). The motivation must also be both objective and specific, i.e., the Examiner's showing must be clear and particular. *See In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). The case law of the Federal Circuit "makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for showing of the teaching or motivation to combine prior art references." *Id.* at 1616, 1617.

In the present case, the Examiner alleges that one would have been motivated to combine DeBruin-Ashton with Falchuk in order to "educate medical professionals for effective delivery of health care services" (Office Action mailed 4/8/2005, page 6). In support of this alleged motivation, the Examiner cites to paragraph 8, lines 6-9 of Falchuk, which recites the following:

As a result, educating physicians and other medical staff so as to ensure standards and "best practice" protocols has become a critical factor to effective delivery of health care services.

First, the Examiner appears to merely cite an argument in the background section of Falchuk advocating consultation between medical practitioners (i.e., system of Falchuk) without providing any real reasoning or logical connection as to how such a statement would compel one of ordinary skill to combine the teachings of DeBruin-Ashton and Falchuk, let alone make the modification and combination proposed by the Examiner. Second, the focus of DeBruin-Ashton is in providing a physician directory to customers, not in educating medical professionals or awarding continuing medical education (CME) credits. As such, the alleged

motivation would not appear to make any logical sense in light of the lack of focus of DeBruin-Ashton on providing physician education/licensing services. Appellants respectfully submit that such a conclusory statement lacking any real logical underpinnings, as provided by the Examiner, is insufficient in providing the requisite motivation or suggestion to make the proposed modification and combination of references, or the "force" to "impel persons skilled in the art to do what applicant has done." *Ex parte Levengood* at 1302.

With respect to Tawil, the Examiner alleges that one of ordinary skill would have been motivated to combine Tawil with De-Bruin-Ashton and Falchuk in order to "include background information on providers" (Final Office Action mailed 3/3/2006, page 3). DeBruin-Ashton, however, already teaches providing information on provides and, like Tawil, is specifically silent with respect to representing practitioners who have performed more procedures than others preferentially on a list. Furthermore, Applicants point out that prior art must be considered "in its entirety," including disclosures that teach away from the claims. MPEP §2141.02; *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303, 312 (Fed.Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

In the present case, DeBruin-Ashton actually teaches away from the proposed combination. DeBruin-Ashton teaches representing physicians who have newly joined the health care plan in a higher proportion than physicians that have been with the health care service for an extended period of time (see, e.g., col. 12, lines 47-54 of DeBruin-Ashton), which produces a result opposite that currently disclosed - i.e., referring patients to practitioners who have more experience and are likely more efficient in performing the medical procedure for which they have been certified (see, e.g., Application, page 8, line 34 to page 9, line 2).

As such, the Examiner's arguments regarding motivation to combine do not constitute the requisite clear and particular showing of a motivation to combine under 35 U.S.C. § 103. Accordingly, there would be no suggestion or motivation so as to impel the skilled artisan to combine the teachings and modify the cited references as proposed by the Examiner.

Thus, for the reasons set forth above, the Office has failed to establish a *prima facie* case of obviousness with respect to the claimed invention, because there is no motivation or suggestion to combine the cited references and, even if combined, DeBruin-Ashton, Falchuk, and



Tawil would still fail to teach or suggest each and every element of the present invention as recited in any of claims 1-5 and 12-15. Appellants also reiterate that the Office bears the initial burden of factually establishing and supporting a *prima facie* case of obviousness. See, e.g., *In re Fine*, 5 USPQ2d at 1598; MPEP § 2142. If the Office does not establish a *prima facie* case, then Appellants are under no obligation to submit evidence of nonobviousness. MPEP § 2142; *In re Piasecki*, 223 USPQ at 787, 788.

Accordingly, for at least the reasons above, the final rejection of claims 1-5 and 12-15 under 35 U.S.C. §103(a) be reversed and the claims allowed.

**B. Claims 6-11 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk et al. (U.S. 2002/0152096 A1) and Tawil (U.S. 5,225,976), and further in view of Kurzius et al. (U.S. 6,385,620 B1).**

In the Final Office Action mailed March 3, 2006 claims 6-11 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Falchuk et al. (U.S. 2002/0152096 A1) and Tawil (U.S. 5,225,976), as applied to claim 1 above, and further in view of Kurzius et al. (U.S. 6,385,620 B1).

The combination of DeBruin-Ashton, Falchuk and Tawil as applied to claim 1 is overcome for at least the reasons set forth above. In particular, Appellants submit that there is no motivation or suggestion to combine DeBruin-Ashton, Falchuk, and Tawil as the Examiner has proposed and, even if combined, the proposed combination of these references would still fail to teach or suggest each and every element of the present invention as recited in independent claim 1.

Kurzius is directed to a system for automated employment candidate recruiting using a network. Appellants initially point out that Kurzius fails to cure the deficiencies of DeBruin-Ashton, Falchuk and Tawil as applied to claim 1, the deficiencies of which Appellants have set forth above. As such, dependent claims 6-11 will be allowable at least for depending from allowable independent claim 1.

With specific regard to dependent claims 6-11, Kurzius is cited by the Examiner as allegedly teaching placing candidates into tiers based on job experience and proficiency level.

Kurzius has nothing to do with referring patients to medical practitioners, certifying practitioners to perform a medical procedure, or information regarding the number of medical procedures performed by medical practitioners. In fact, the provision of Kurzius cited by the Examiner (col. 17, lines 48-52) merely teaches that a candidate may indicate, in a "candidate proficiency form," employment qualification information such as years of experience and proficiency level (e.g., beginner, intermediate, etc.).

Kurzius, however, fails to teach, either at the provision cited by the Examiner or elsewhere, medical practitioners placed into tiers based on the number of procedures performed and wherein practitioners from higher tiers are preferentially placed on lists, as recited in claim 6. Allowing an employment candidate to indicate, in completing a candidate proficiency form, proficiency level selected from a list of categories (e.g., beginner, intermediate, etc.) simply is not equivalent to placing medical practitioners into tiers based on the number of medical procedures performed, as alleged by the Examiner (Office Action mailed 4/8/2005, page 6). As such, the cited references fail to teach or suggest each and every element of claims 6-11, and the candidate recruiting system of Kurzius would not be easily adaptable from placing medical practitioners into tiers based on the number of procedures performed.

Furthermore, not only do the cited references fail to teach the claimed invention, but the Examiner has not factually established the requisite motivation or suggestion in the art to combine the teachings of Kurzius with those of DeBruin-Ashton, Falchuk and Tawil. Instead, the Examiner again cites provisions of Kurzius (e.g., col. 17, lines 48-52 of Kurzius) that were already cited by the Examiner as allegedly teaching placing medical practitioners into tiers based on the number of procedures performed (see, e.g., Office Action mailed 4/8/2005, page 7). First, for the reasons set forth above, the provision of Kurzius cited by the Examiner does not teach placing medical practitioners into tiers as recited in claim 6 of the present application. Second, re-citing a provision that allegedly teaches a claim element is insufficient to establish the separate requirement for establishing a *prima facie* case of obviousness, which is that the Examiner must establish a specific motivation or suggestion to combine the cited references so as to achieve the claimed invention. See, e.g., MPEP § 2143, setting forth three basic requirements for establishing *prima facie* obviousness.

As the Examiner is certainly aware, the courts have repeatedly instructed that rejection of applications solely by finding alleged prior art corollaries for claimed elements is inappropriate because it essentially would permit an Examiner "to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention." *In re Rouffet*, 47 USPQ2d 1453 (Fed.Cir. 1998). In order to prevent impermissible hindsight reconstruction of prior art references based on the Appellants' own disclosure, the Examiner must specifically show a motivation to combine the references in order to establish *prima facie* obviousness. *Id.* In the present instance, the Examiner has failed to identify the requisite suggestion or motivation, but instead merely re-cited the provisions where the alleged teaching of a claim element would be found. Such a showing is not sufficient to provide the requisite motivation or suggestion to combine the cited references as suggested and, therefore, fails to support a case of *prima facie* obviousness.

Accordingly, for at least the reasons above, the final rejection of claims 6-11 under 35 U.S.C. §103(a) be reversed and the claims allowed.

**C. Claims 14, 16-19, 21-22, and 29-30 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1).**

In the Final Office Action mailed March 3, 2006 claims 14, 16-19, 21-22, and 29-30 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1). The rejection is traversed for the reasons set forth below.

Independent claim 14, from which claims 16-19, 21-22, and 29-30 depend, reads as follows:

*A method for referring patients to dental practitioners, said method comprising:*

*certifying dental practitioners to perform a dental procedure;*  
*informing a potential patient population of the availability of the procedure;*

*identifying individual patients who wish to receive the procedure;  
accessing an electronic database having information comprising  
performance criteria for each of the group of certified dental  
practitioners; and  
providing to the identified individual patients referral lists of  
certified practitioners, selected from the electronic database, wherein  
individual practitioners are preferentially placed on the referral lists  
based on one or more performance criteria.*

In the interest of administrative economy and efficiency, Appellants present their position for the patentability of the pending claims as a single group, using claim 14 as a representative claim. Should it become relevant, Appellants reserve the right to present additional grounds for patentability of dependent claims in this or any subsequent proceeding.

The cited references of DeBruin-Ashton and Joao, either alone or in combination, fail to teach each and every element of the claimed invention, thereby precluding *prima facie* obviousness under 35 U.S.C. §103. The DeBruin-Ashton fails to teach each element of claim 14 for a similar rationale as set forth above with respect to claim 1. In particular, DeBruin-Ashton fails to teach at least the steps of a) certifying a group of practitioners to perform a dental procedure; b) accessing an electronic database having information comprising performance criteria for each of the group of certified dental practitioners; and c) providing to the identified individual patients referral lists of certified practitioners, selected from the electronic database, wherein individual practitioners are preferentially placed on the referral lists based on one or more performance criteria, as recited in claim 14. Joao, however, does not cure the deficiencies of DeBruin-Ashton.

It is admitted in the Office Action mailed 4/8/2005 (e.g., page 11) that DeBruin-Ashton does not teach dental practitioners or certifying dental practitioners to perform a dental procedure. However, Joao does not teach certifying dental practitioners to perform a dental procedure, as alleged by the Examiner (Office Action mailed 4/8/2005, page 11).

Joao is directed to an apparatus for providing healthcare information for payer and provider communication, including a central processing computer (see, e.g., Figure 2 of Joao). Joao teaches that the central processing computer includes a database and provides a voluminous list of possible types of data that may be included in the database of the central processing computer (see, e.g., paragraphs 0156-0180 of Joao). Joao merely mentions, among a voluminous list of possible types of data that may be included in the database the central processing computer (see, e.g., paragraphs 0156-0180 of Joao), that such data may include video and/or audio files for "dental training" (paragraph 0167 of Joao). It is submitted that mere vague reference to "dental training" files in the context of database storage information, without more, is insufficient to teach the specific step of certifying dental practitioners to perform a dental procedure as recited in the claim 14 and disclosed throughout the specification.

In response to Appellants' comments regarding the failure of Joao to teach certifying dental practitioners recited in claim 14, as originally set forth in Appellants' response mailed 9/12/2005, the Examiner responded as follows:

As per the third argument, the Examiner disagrees as Joao is also directed to the training of healthcare professionals (para. 167 of Joao). Joao teaches that dentist are provided training (see para. 167 of Joao). As such, Joao teaches certifying dental practitioners.

Office Action mailed 3/3/2006, page 11.

These statements by the Examiner are insufficient to rebut Appellants' comments as originally set forth in the response mailed 9/12/2005. Joao is not "directed to training of healthcare professionals" as alleged by the Examiner, but is directed to providing healthcare information (e.g., healthcare record or file) for patient, payer and provider communication (see, e.g., Abstract; Figure 1 of Joao). Joao merely mentions "dental training" among a voluminous list of database files that may be contained in a database. For the reasons set forth above, mere reference to "dental training" does not satisfy the requirement that, in order to establish a *prima facie* case of obviousness, claim elements be specifically taught in the prior art reference being cited. The Examiner has merely re-cited, multiple times, the same provision of Joao (para. 167 of Joao) and offered a broad, conclusory statement without setting forth any evidence or

argument of a particularized teaching in Joao of the claim element at issue. Broad, conclusory statements that are unsupported by the cited art, however, standing alone are not "evidence" of obviousness. Joao simply does not teach certifying dental practitioners as recited in claim 14, regardless of how many times the Examiner references the same provision of Joao.

Furthermore, not only do the cited references fail to teach each and every element of claim 14, but the Examiner has not factually established a motivation or suggestion in the art or anywhere else to modify DeBruin-Ashton to include the database of Joao. Instead, the Examiner only cites to paragraph 0029 of Joao, which is a portion of a large and voluminous list of types of applications/information provided in the Joao database. Thus the Examiner has merely reiterated the purported teachings of the cited references followed by a conclusory statement that these teachings would motivate a person to combine the cited references to achieve the claimed invention. However, broad, conclusory statements regarding the alleged teachings of multiple references, standing alone, are not "evidence" of obviousness. See, *Dembiczak*, 50 USPQ2d at 1617. As set forth above, such "reference-by-reference, limitation-by-limitation analysis" for determining obviousness, without showing a specific and objective motivation to combine the references to yield the claimed invention, has been specifically rejected by the Federal Circuit. *See Id.* at 1618.

For the reasons set forth above, the Examiner has not established a *prima facie* case of obviousness. The Office has not made a clear and particular showing of a motivation to combine the cited references to achieve the invention as claimed. Even if, for arguments sake only, one were to combine the cited references, the proposed combination would still fail to teach each and every element of the invention as set forth in claim 14. Accordingly, for at least the reasons above, the final rejection of claims 14, 16-19, 21-22, and 29-30 under 35 U.S.C. §103(a) should be reversed and the claims allowed.

**D. Claim 15 was improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Tawil (U.S. 5,225,976).**

In the Final Office Action mailed March 3, 2006, claim 15 was improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), as applied to claim 14 above, and further in view of Tawil (U.S. 5,225,976). The rejection is traversed for the reasons set forth below.

The combination of DeBruin-Ashton and Joao as applied to claim 14 is overcome for at least the reasons set forth above. In particular, Appellants submit that there is no motivation or suggestion to combine DeBruin-Ashton and Joao as the Examiner has proposed and, even if combined, the proposed combination of these references would still fail to teach or suggest each and every element of the present invention as recited in independent claim 14.

Appellants initially point out that Tawil fails to cure the deficiencies of DeBruin-Ashton and Joao as applied to claim 1, the deficiencies of which Appellants have set forth above. As such, dependent claim 15 will be allowable at least for depending from allowable independent claim 14.

With specific regard to dependent claim 15, Tawil is cited by the Examiner as allegedly teaching performance criteria including the number of dental procedures performed over a preselected time (Office Action mailed 4/8/2005, page 14). Tawil, which is directed to an automated health benefit processing system for the purposes of determining insurance benefit/payment information, is traversed for at least a similar rationale as applied to claim 1 above. In particular, Tawil fails to teach providing to the identified individual patients referral lists of certified practitioners, selected from the electronic database, wherein individual practitioners are preferentially placed on the referral lists based on one or more performance criteria. Thus, even if information from the Tawil database were provided to a patient, Tawil does not teach providing a list of certified practitioners or a referral list where practitioners are placed preferentially on the referral list based on one or more performance criteria.

Thus, for at least the reasons set forth above, the Examiner has not established a *prima facie* case of obviousness. Accordingly, the final rejection of claim 15 under 35 U.S.C. §103(a) should be reversed and the claims allowed.

**E. Claim 20 was improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and further in view of Falchuk et al. (U.S. 2002/0152096 A1).**

In the Final Office Action mailed March 3, 2006, claim 15 was improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), as applied to claim 14 above, and further in view of Falchuk et al. (U.S. 2002/0152096 A1). The rejection is traversed for the reasons set forth below.

The combination of DeBruin-Ashton and Joao as applied to claim 14 is overcome for at least the reasons set forth above. As such, dependent claim 15 will be allowable at least for depending from allowable independent claim 14.

Claim 20, which depends from claim 14, additionally recites the element "wherein certifying the dental practitioners comprises testing the dental practitioners." The Examiner has cited Falchuk, but has not shown where the cited art teaches or suggests this element of claim 20. As set forth above, Falchuk's facilitating consultation between physicians for the purpose of awarding CME credits is not equivalent to the certifying dental practitioners as recited in the current claims.

Thus, for at least the reasons set forth above, the Examiner has not established a *prima facie* case of obviousness. Accordingly, the final rejection of claim 20 under 35 U.S.C. §103(a) should be reversed and the claims allowed.



**F. Claims 23-28 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and in view of Tawil (U.S. 5,225,976), and further in view of Kurzius et al. (U.S. 6,385,620 B1).**

In the Final Office Action mailed March 3, 2006, claims 23-28 were improperly rejected under 35 U.S.C. §103(a) over DeBruin-Ashton (U.S. 6,014,629) in view of Joao (U.S. 2002/0032583 A1), and in view of Tawil (U.S. 5,225,976), as applied to claims 14-15 above and further in view of Kurzius et al. (U.S. 6,385,620 B1).

The combination of DeBruin-Ashton, Joao and Tawil as applied to claim 15 is overcome for at least the reasons set forth above. As such, dependent claim 15 will be allowable at least for depending from allowable independent claim 14 and dependent claim 15.

Furthermore, the Examiner has cited Kurzius, but has not shown where the cited art teaches or suggests the elements recited in claims 23-28. Appellants submit that, for a similar rationale as set forth above with respect to Kurzius, while the cited reference might teach automated employment candidate recruiting, Kurzius does not teach placing dental practitioners into tiers based on the number of procedures performed and wherein the tiers are arranged in order on the list. Accordingly, the final rejection of claims 23-28 under 35 U.S.C. §103(a) should be reversed and the claims allowed.

**G. Claims 46-49, 51-52, 55-56, and 58 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5, 225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1).**

In the Final Office Action mailed March 3, 2006, claims 46-49, 51-52, 55-56, and 58 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5, 225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1).

Independent claim 46, from which claims 47-49, 51-52, 55-56, and 58 depend, reads as follows:

*A method for maintaining a referral directory, said method comprising:  
certifying practitioners to perform a medical procedure;*

*tracking a number of times each certified practitioner performs the procedure; and*

*maintaining a patient referral directory in an electronic database having information comprising the number of times each certified practitioner has performed the procedure, wherein certified practitioners selected from the electronic database are prioritized on a list based on the number of times each certified practitioner has performed the procedure.*

In the interest of administrative economy and efficiency, Appellants present their position for the patentability of the pending claims as a single group, using claim 46 as a representative claim. Should it become relevant, Appellants reserve the right to present additional grounds for patentability of dependent claims in this or any subsequent proceeding.

The Examiner has failed to show where the cited art teaches or suggests each and every element of claim 46 as recited above. As set forth above, the teachings of Falchuk focus on a medical consultation support system designed to direct consultation between a primary care physicians and a specialist physicians, but fail to teach certifying a group of practitioners to perform a medical procedure. For example, the continuing medical education (CME) "accreditation" taught at paragraph 0030 of Falchuk and cited by the Examiner is distinguished from the "certifying" step of the current disclosure and claims. As further set forth above, even if information from the Tawil database were provided to a patient, Tawil does not teach certifying practitioners or selecting certified practitioners from an electronic database and prioritizing the certified practitioners on a list based on the number of times each certified practitioner has performed the procedure. As such, the cited references fail to teach each and every element of claim 46.

Moreover, there is no motivation or suggestion to a person of ordinary skill in the art to combine Falchuk and Tawil to achieve the method as recited in claim 46. In citing to col. 4, lines 57-59 of Tawil as providing the alleged motivation, the Examiner has merely reiterated the purporting teachings of the cited reference followed by a conclusory statement that these teachings would provide the requisite motivation. Appellants submit that the provision of Tawil

cited by the Examiner would provide no motivation or suggestion to compel one skilled in the art to combine the two very different systems of Falchuk and Tawil (e.g., see above).

Thus, for at least the reasons set forth above, the Examiner has not established a *prima facie* case of obviousness. Accordingly, the final rejection of claims 46-49, 51-52, 55-56 under 35 U.S.C. §103(a) should be reversed and the claims allowed.

**H. Claims 50 and 59 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1), and further in view of DeBruin-Ashton (U.S. 6,014,629).**

In the Final Office Action mailed March 3, 2006, claims 50 and 59 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1), as applied to claim 46 above, and further in view of DeBruin-Ashton (U.S. 6,014,629).

The combination of Tawil and Falchuk as applied to claim 46 is overcome for at least the reasons set forth above. DeBruin-Ashton does not provide the teachings that are missing from the combination of Tawil and Falchuk. As such, dependent claims 50 and 59 will be allowable at least for depending from allowable independent claim 46. Accordingly, the final rejection of claims 50 and 59 under 35 U.S.C. §103(a) should be reversed and the claims allowed.

**I. Claims 53-54 and 57 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1), and further in view of Kurzius et al. (U.S. 6,385,620 B1).**

In the Final Office Action mailed March 3, 2006, claims 53-54 and 57 were improperly rejected under 35 U.S.C. §103(a) over Tawil (U.S. 5,225,976) in view of Falchuk et al. (U.S. 2002/0152096 A1), as applied to claim 46 above, and further in view of Kurzius et al. (U.S. 6,385,620 B1).

The combination of Tawil and Falchuk as applied to claim 46 is overcome for at least the reasons set forth above. Kurzius does not provide the teachings that are missing from

the combination of Tawil and Falchuk. As such, dependent claims 53-54 and 57 will be allowable at least for depending from allowable independent claim 46.

Furthermore, the Examiner has cited Kurzius, but has not shown where the cited art teaches or suggests the elements recited in claims 53-54 and 57. Appellants submit that, for a similar rationale as set forth above with respect to Kurzius, while the cited reference might teach automated employment candidate recruiting, Kurzius does not teach placing practitioners into tiers based on the number of procedures performed as recited in any of claims 53-54 and 57.

Accordingly, the final rejection of claims 53-54 and 57 under 35 U.S.C. §103(a) should be reversed and the claims allowed.


**8. CONCLUSION**

Appellant believes that the above discussion is fully responsive to all grounds of rejection set forth in the Final Office Action dated March 3, 2006. For the above stated reasons, it is respectfully submitted that the rejection should be reversed.

Respectfully submitted,

Date: \_\_\_\_\_

1/3/2007



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## **9. CLAIMS APPENDIX**

1. A method for referring patients to practitioners, said method comprising:  
certifying a group of practitioners to perform a medical procedure;  
identifying individual patients who wish to receive the procedure;  
accessing an electronic database having information comprising a number of  
procedures performed by each of the group of certified practitioners; and  
providing to the identified individual patients a list of certified practitioners,  
selected from the electronic database, wherein those practitioners who have performed more  
procedures than others of the practitioners are placed preferentially on the list.
2. A method as in claim 1, wherein certifying the practitioners comprises  
training practitioners.
3. A method as in claim 1 or 2, wherein certifying the practitioners  
comprises testing the practitioners.
4. A method as in claim 1 or 2, wherein certifying comprises requiring that  
the practitioners have performed at least one procedure.
5. A method as in claim 1, further comprising removing practitioners from  
the certified group.
6. A method as in claim 1, wherein the practitioners are placed into tiers  
based on the number of procedures performed and wherein practitioners from higher tiers are  
preferentially placed on lists.
7. A method as in claim 6, wherein the individual practitioners are randomly  
ordered within a tier.
8. A method as in claim 6 or 7, wherein each tier is defined by a threshold  
number of procedures performed over a selected period of time.

9. A method as in claims 6 or 7, wherein each tier is defined by the aggregate number of procedures performed.

10. A method as in claim 6, wherein the practitioners are assigned to at least three tiers.

11. A method as in claim 10, wherein the practitioners are assigned to an initial tier when they become certified, to an intermediate tier when they treat a first threshold number of patients over a preselected time period, and to a higher tier when they treat a second threshold number of patients over the preselected time period.

12. A method as in claim 1, wherein identifying individual patients comprises collecting names and contact information from individual patients.

13. A method as in claim 12, wherein at least some of the individual patients contact a coordinator in response to solicitations.

14. A method for referring patients to dental practitioners, said method comprising:

- certifying dental practitioners to perform a dental procedure;
- informing a potential patient population of the availability of the procedure;
- identifying individual patients who wish to receive the procedure;
- accessing an electronic database having information comprising performance criteria for each of the group of certified dental practitioners; and
- providing to the identified individual patients referral lists of certified practitioners, selected from the electronic database, wherein individual practitioners are preferentially placed on the referral lists based on one or more performance criteria.

15. A method as in claim 14, wherein the performance criteria include the number of dental procedures performed over a preselected time period.

16. A method as in claim 14 or 15, wherein the performance criteria include data relating to successful patient outcomes.

17. A method as in claim 14, wherein informing comprises soliciting patients.

18. A method as in claim 17, wherein soliciting comprises advertising in print and/or electronic media.

19. A method as in claim 14, wherein certifying the dental practitioners comprises training the dental practitioners.

20. A method as in claim 14 or 19, wherein certifying the dental practitioners comprises testing the dental practitioners.

21. A method as in claim 14 or 19, wherein certifying comprises requiring that the dental practitioners have performed at least one procedure.

22. A method as in claim 14, further comprising removing dental practitioners from the certified group.

23. A method as in claim 15, wherein the dental practitioners are placed into tiers based on the number of procedures performed and wherein the tiers are arranged in order on the list.

24. A method as in claim 23, wherein the individual dental practitioners are randomly ordered within a tier.

25. A method as in claim 23, wherein the dental practitioners are assigned to at least three tiers.

26. A method as in claim 23, 24, or 25, wherein each tier is defined by a threshold number of procedures performed over a selected period of time.



27. A method as in claim 23, 24, or 25, wherein each tier is defined by an aggregate number of procedures performed.

28. A method as in claim 25, wherein the dental practitioners are assigned to an initial tier when they become certified, to an intermediate tier when they treat a first threshold number of patients over a preselected time period, and to a higher tier when they treat a second threshold number of patients over the preselected time period.

29. A method as in claim 14, wherein identifying individual patients comprises collecting names and contact information from individual patients who contact a coordinator.

30. A method as in claim 29, wherein at least some of the individual patients contact a referral center who produces the referral list in response to solicitations from the coordinator.

31-45. (Canceled)

46. A method for maintaining a referral directory, said method comprising:  
certifying practitioners to perform a medical procedure;  
tracking a number of times each certified practitioner performs the procedure; and  
maintaining a patient referral directory in an electronic database having information comprising the number of times each certified practitioner has performed the procedure, wherein certified practitioners selected from the electronic database are prioritized on a list based on the number of times each certified practitioner has performed the procedure.

47. A method as in claim 46, wherein certifying the practitioners comprises training practitioners.

48. A method as in claim 46 or 47, wherein certifying the practitioners comprises testing the practitioners.

49. A method as in claim 46 or 47, wherein certifying comprises requiring that the practitioners have performed at least one procedure.

50. A method as in claim 46, further comprising removing practitioners from the certified group.

51. A method as in claim 46, wherein tracking comprises determining the number of times a practitioner acquires a kit to perform the procedure on a patient.

52. A method as in claim 46, further comprising dividing the directory based on geographic location.

53. A method as in claim 52, wherein the list is divided into at least two tiers with practitioners who have performed more than a first threshold number of procedures being in a higher tier.

54. A method as in claim 53, wherein the list is divided into at least three tiers with practitioners who have performed more than a first threshold number of procedures being in a higher tier, those who have performed more than a second threshold number but less than the first being in a lower tier, and those who have performed less than the second threshold number being in a still lower tier.

55. A method as in any of claims 47, 50, 51, 52, 53, or 54, wherein the number of times the procedure is performed is measured periodically over a fixed time interval and the directory periodically updated.

56. A method as in any of claims 47, 50, 51, 52, 53, or 54, wherein the practitioners are not ordered within a tier.

57. A method as in any of claims 47, 50, 51, 52, 53, or 54, wherein the practitioners are further ranked within each tier based on the number of procedures performed.

58. A method as in claim 46, wherein the directory is maintained in an electronic database.

59. A method as in claim 58, further comprising generating a referral list for an individual patient from the patient referral directory, wherein the listed is generated automatically from the electronic database based on the patient's geographic location and wherein practitioners with a higher priority have an increased likelihood of appearing on any referral list.

60-70. (Canceled)

**10. EVIDENCE APPENDIX**

None.

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**11. RELATED PROCEEDINGS APPENDIX**

None.